Before the

FEDERAL COMMUNICATIONS COMMISSION

Washington, D.C. 20554

In the Matter of:	)	
	)	
Connect America Fund	)	**WC Docket No. 10-90**
	)	
A National Broadband Plan for our Future	)	**GN Docket No. 09-51**
	)	
Establishing Just and Reasonable Rates for Local Exchange Carriers	)	**WC Docket No. 07-135**
	)	
High-Cost Universal Service Support	)	**WC Docket No. 05-337**
	)	
Developing a Unified Intercarrier Compensation Regime	)	**CC Docket No. 01-92**
	)	
Federal-State Joint Board on Universal Service	)	**CC Docket No. 96-45**
	)	
Lifeline and Link-Up	)	**WC Docket No. 03-109**

COMMENTS OF

SACRED WIND COMMUNICATIONS, INC.
SERVING THE NAVAJO NATION

Sacred Wind Communications, Inc. congratulates the FCC for addressing a multitude of difficult issues that underlie meaningful reform to its Universal Services Fund program and offers in this response some ideas and concerns from a rural local exchange carrier that serves a high cost, remote tribal area.

As a relatively new incumbent rural ILEC operating within Navajo Lands in New Mexico, and as a USDA-RUS telecommunications loan recipient, Sacred Wind has built an Internet Protocol (IP) based network from a legacy network it acquired in 2006, investing to date $36 Million from its government loan. Even though having experienced many months of land use authorization delays, Sacred Wind has built a robust fixed wireless and landline network that now can reach approximately 60 percent of the unserved homes in its territory with both basic voice services and advanced services, including broadband of over 4 Mbps download and 1 Mbps upload. The remaining 40 percent will be reachable with the further installation of one or more relay poles

from Sacred Wind's completed backbone tower network, a final stage that should be completed by 2013. Using the most efficient technology for a geographically challenging area, the company has increased basic telecommunications availability from 26 percent to 60 percent and broadband availability from 1 percent of its landline-served customers to 99 percent and to 100 percent broadband availability to its fixed wireless-served customers.

Sacred Wind's network infrastructure costs and its operating costs are higher on a per subscriber basis than non-rural telcos and many rural telcos that serve flatter terrain. This is a simple matter of fact in a vast service territory where population densities are low and the amount of network infrastructure needed to cover the entire area – flatlands and canyons - is high. No single technology is appropriate for the entire area where the distance between communities and the population density make landline deployment unaffordable, where the mountains and canyons within its territory, which separate hundreds of Navajo homes in small clusters many miles from each other, make mobile wireless communications unworkable in considerable parts of Navajo Lands. The optimum telecommunications solutions for the Navajo people, generally, are: 1) landline and mobile wireless close to roadways where highway right of way and higher subscriber densities build an affordability case for both technologies; 2) mobile wireless or fixed wireless-to-landline subscriber loops[1] over flat lands where population densities warrant[2]; 3) fixed wireless to the home over more challenging terrain and more remote, less densely populated areas; and finally, satellite for a few handfuls of customers in the most desperate areas.

This brief overview of Sacred Wind's circumstances form a basis for understanding its responses to the FCC's proposal to reduce High Cost Loop Support and transition it to a Connect America Fund, phase out Interstate Access Support, and eliminate Switch Support.

1. Some form of High Cost Loop Support for RLECs is still warranted.

   The FCC states on page 12 of its NPRM that "high cost loop support largely goes to companies that have accelerated network upgrades throughout their territory, leaving nothing available for other smaller companies that choose to upgrade their networks more incrementally." Sacred Wind agrees that companies in an accelerated construction mode incur a different intensity of costs, but other RLECs that operate in as hard-to-serve areas as we incur high operating costs whether we accelerate or incrementalize our network upgrades.

[1] Wireless-to-landline subscriber loops refer to a microwave signal to a remote HUD community or other cluster of homes, avoiding costly landline feeder cable and right of way acquisition, and at the housing cluster the radio is interconnected to copper or fiber drops to each individual home. This is the most affordable and effective way to carry a reliable, carrier-grade voice and broadband pathway directly to remote housing clusters.

[2] To distinguish one wireless technology from another in canyon terrain, fixed wireless systems take the antenna (and the signal) to the home, while with mobile service the customer must travel from the home to seek the antenna (and the signal).

The main differences between one set of companies and the other are the intensity of the work load, the number of contractors that must be managed, and the accounting department's work order documentation that is processed through the RUS for loan draw-downs. All else is much the same for all RLECs except where one encounters a singularly different circumstance: an RLEC's decision to *not* adequately upgrade its network.

For one reason or another, an RLEC may decide to defer its investment in its network and rely on its current customer base and USF support for its revenues. Such an RLEC either has not faced competition, has been weakened by its competition to the point of inertia, or is owned by an out of state holding company that has more promising markets elsewhere[3]. Let's examine what may carry an RLEC to the point of inertia:

Pursuant to USF and NECA rules, an RLEC is not encouraged to use its network to generate new or extraneous sources of revenues. It is often the case that, by allocating a portion of an RLEC's plant to an unregulated service, especially one that is defined as interstate or not distinctly part of the local loop, an RLEC can actually lose money in the transaction by losing more in USF support than it would gain from the sale of new, unregulated services. Consequently, a CLEC or wireless company can move into that RLEC's territory and acquire that unregulated customer and then many more.

The operating costs of an RLEC are understandably higher in comparison with their urban counterparts – a smaller customer base, served from a higher per-customer-costing outside plant, needs to be supported by a fixed number of required staff. This fact does not signify that an RLEC is necessarily less efficient than other categories of providers, nor does it immediately call for reform. The RLEC services model and the FCC's USF support model have been a resounding success in providing the greater majority of Americans with affordable telecommunications services in rural areas. But, the FCC has made the USF system more complicated than it needs to be. And, it is not necessary to look for a different model of provider as the FCC pursues improving the USF.

2. Why the current USF program fails a taxpayers' efficiency test

As stated above, the FCC's universal services program can be considered a huge success for having reached its overarching goal: to make basic telecommunications services available in rural areas of a quality and price similar to those in urban areas. The program was oriented to support *the RLEC community's* delivery of services in rural areas. The program has been undermined, however, by other factors that work at cross purposes:

[3] In 2006, five ILECs operated within portions of the Navajo Nation's 27,000 square miles where telephone availability was around 40%; all those companies were owned by larger out of state companies. Working with the Navajo Nation, Sacred Wind acquired the last mile of one of the ILECs and "localized" investment and its service to Navajo households.

a. Out of state telcos, mostly the larger carriers, have invested less in advanced infrastructures in their more remote rural areas where the costs of service cause a drain on their returns. While the RLECs, by and large, have done an admirable job of upgrading their networks for advanced services in rural areas, the larger carriers have not. But, a smaller RLEC's acquisition of the more remote exchanges in another ILEC's territory is regulatorily and administratively burdensome … and risky in today's uncertain regulatory environment.
b. Mobile wireless carriers have used the USF to supplement network construction in a mad dash to be the first in the market with the latest generation of mobile digital services. They represent the largest competitor to the RLECs and are the primary reason for the RLECs' loss of access lines. Not only do most spectrum licenses not coincide with an RLEC's territory, but an RLEC's acquisition of spectrum, as a defensive strategy against national carriers, is also burdensome.
c. The cost separations process in determining USF and NECA support for RLECs often disincent investment in facilities that could be used by RLECs to generate new sources of revenues. The use of an RLEC's fiber facilities for bandwidth sales outside of its territory, for example, or of an RLEC's communications tower for installation of mobile wireless equipment, often result in greater loss of USF support than a gain in revenues.
d. The effect of a, b and c above has been a steady erosion of customers from an RLEC to a less regulated competitor. The growth of mobile wireless accounts and minutes and concomitant decrease in landline access lines fit with many technological evolutionary trends, but this particular dynamic raises two questions that few previous technological changes have had to face: 1) How are customers who remain (by choice or by their remoteness) with the incumbent to be held harmless from any service quality denigration caused by reduced funding for the RLEC? and 2) How are the RLEC's unrelenting obligation to serve and the payment of current debt for investing in its network to be managed? and 3) What effect will an RLEC's failure to cover its debt have on the RUS loan program and on other financial institutions?

In the FCC's drive to restore efficiency to its USF program, it questions the USF's current support for RLECs instead of seeking to address the factors above that have disadvantaged RLECs and have adversely impacted the USF. Or, to put it in other words, the RLECs have not lost a technology war – they have been hamstrung by public policy that supports the centralization of telecommunications services and the apparent abandonment of a home-based solution in favor of a move toward mobility.

3. USF Reform must build upon our Universal Service history, not undo it.

We acknowledge the FCC's questions regarding elimination of, or reduction in LSS, ICLS, and HCLS support and their transition to a Connect America Fund. Some of the questions

posed in this NPRM seem to point toward a more complex, not a more simplified, USF solution. Reform of the USF will be a target missed if simplification is not a part of it. To the RLECs' peril, the NPRM seems to direct the industry toward higher regulatory costs and less financial support. Another risk to this reform effort is a potential divergence from the original universal service objectives in unserved areas in the name of what mobile wireless carriers term efficiency. To rural customers' peril, the NPRM seems to argue for broadband solutions as provided by the more cost efficient provider (a reverse auction for a study area or satellite services in the most remote areas) with little discussion about how the decreased reliability of carrier grade voice services for customers in remote areas will degrade the FCC's universal service legacy. For example, in a previously unserved area of northwestern New Mexico, encompassing about 250 square miles, 104 Navajo homes are scattered over the entire area in clusters of 3-6 homes located in various canyons. Sacred Wind was able to deliver voice and broadband services to them over a fixed wireless system that involved multiple towers and relay poles. Mobile wireless carriers' solution would likely have been coverage in the general area along some trafficked roadways but no service at all to such hard-to-reach canyons. A satellite solution would likely involve a high maintenance satellite antenna in an environmentally demanding area with no one locally to service it, and a monthly cost of transponder access exceeding $150/month for latent voice and limited broadband. Will a reverse auction take into account such hard to serve customers or will a solution for them be -- in the name of cost efficiency -- a basic phone that is only usable with a car attached to it, or a satellite phone that works only between service calls from the nearest satellite TV technician?

In either case of a mobile or satellite alternative for rural areas, the local RLEC with a fixed wireless infrastructure already in place offers the most viable solution: mobility can be added to the incumbent RLEC's infrastructure and the RLEC's technicians can be trained to service a satellite unit where the RLEC has partnered with a satellite company to offer such complementary services. The health of the RLEC is required in both cases.

4. A Connect America Fund can meet its broadband objectives while sustaining RLECs.

Because we firmly believe that the locally based RLECs have proven their worth in building advanced infrastructures and delivering quality voice and Internet services to their customers, we recommend that a reformed USF program be built around them. Granted, some RLECs have more work to do to further improve their systems for higher capacity broadband, and many more would need to improve their systems for full IP compatibility, but what better means to reach all rural customers in a study area than to work with the RLECs? Sacred Wind's newness in the RLEC community has advantaged it in terms of using the most affordable and best available equipment to develop a full IP platform for its entire network – available to all of its fixed wireless-fed, copper landline-fed and fiber optic-fed customers. Sacred Wind, in essence, establishes a signal path to every home and then works with the customer to provide him with voice service, broadband service, or both. The optimum

strategy, therefore, for the FCC in its drive to expand broadband across the nation would be to financially support the RLECs' delivery of a broadband channel to each home by further upgrading its *voice* network and incenting them through reforms to the separations process to sell advanced services. This may sound similar to what the FCC proposes in its restructure of the USF program (FCC NPRM paragraph 203), but it's not.

Reverse auctions

No reverse auctions for Connect America Fund (CAF1 or CAF2) support should be contemplated that would disadvantage an RLEC, jeopardizing its financial viability and putting the FCC program in conflict with the USDA-RUS's demand that its borrowers maintain a TIER ratio (Times Interest Earned Ratio) of 1.0 or more.[4] CAF1 should be converted to an FCC-led effort to induce an RLEC to seek RUS, Cobank, or other finance institutional loan to upgrade its network to be IP compatible. This is a free market approach to demand systems upgrades. If an RLEC refuses and would surrender its Carrier of Last Resort (COLR) designation, the offer should be made to other carriers to secure such loans for network development, and the state Public Utility Commission would be responsible for selecting another carrier to be the COLR (FCC NPRM paragraph 101). No further CAF1 stimulus or grant monies are needed for network development**.** In fact, they are harmful to the incumbent RLEC as an anticompetitive enabling device to others. If any CAF1 monies are to be expended to promote broadband deployment, let them be used to induce federal and state government departments to make ready their rights of way for broadband infrastructures. (Another use of CAF1 monies is suggested in Section 7 below in the event that changes to the FCC's current USF program cause sudden and irretrievable harm to an RLEC.) Only one entity should be designated a COLR and that entity alone should receive CAF support (answer to FCC NPRM paragraph 281).

The state PUCs, too, should be assigned the responsibility of identifying the unserved or underserved areas within their states, whether by census block or exchange area. The FCC risks receiving an inaccurate portrayal of underserved or unserved areas if members of the industry are requested to provide that information. Should a provider underestimate coverage in order to seek greater broadband support or overestimate coverage to discourage broadband support for alternative providers? Sacred Wind has already noted incorrect

[4] RUS imposes a minimum TIER (Times Interest Earned Ratio) requirement and Debt Service Coverage (DSC), Operating Times Interest Earned Ratio (OTIER) and Operating Debt Service Coverage (ODSC) standards in order to ensure loan security

broadband coverage information provided to the coordinators of the broadband mapping project (FCC NPRM paragraph 289).

In response to the question in FCC NPRM paragraph 271 regarding a time limitation on network completion using CAF1 funds, the FCC may impose a 3-year timeline within the 5-year construction deadline set forth in RUS loan agreements. Certain contingencies related to right of way acquisition would have to be included.

Qualified expenses for CAF support

As stated earlier, the separations process, carrier access support, USF support restrictions, etc. create a regulatory and accounting behemoth purportedly to ensure that all USF support is well targeted. RLECs, for their size of operations and receipts payables, must staff their accounting and regulatory departments more heavily than companies of comparable size in other industries (FCC NPRM paragraph 194). The bottom line of needed USF support for RLECs is their bottom line: recurring operating expenses in high cost-to-serve areas that cannot be covered by customer revenues. Might a CAF support system be developed that would simply cover the total legitimate and acceptable expenses of an RLEC that are not covered by the RLEC's customer revenues? Once a different cost reporting system is set in place, the monitoring and compliance could be far more easily administered than today's system in which a changing percentage of a changing average cost per loop, and a separate determination of which expense is more supported than another, arrives at an ever changing number. With the elimination of such an arduous measurement scheme of an RLEC's operations or a separations examination of, and limitation placed on, every investment, the RLEC would be incented to upgrade its network in order to remain technologically and competitively viable, and would incur only those operating expenses that made financial sense. Today's scheme encourages the development of an organization (OPEX) and of an infrastructure (CAPEX) that maximize USF support and the avoidance of those that reduce USF support.

In lieu of the current limitations of USF support, could the FCC establish from currently available industry statistics the average personnel count, range of salaries, benefits, overhead expenses, contractor fees, etc. and have CAF2 cover all such legitimate expenses within the acceptable ranges that are not covered by customer revenues from the RLEC's provision of basic services?[5] For example, a national rural standard of acceptable expenses along the following lines can be developed:

- Payroll
    - for companies with 100-1,499 access lines – no more than XX FTEs
    - for companies with 1,500 – 2,999 access lines – no more than XX FTEs, etc.

[5] Some additional costs incurred by tribal and other RLECs serving tribal communities as a necessary part of doing business on tribal lands is discussed in section 5.

    - Salary for CSRs – up to XXX
    - Salary for OSP Techs – up to XXX, etc.
    - Savings plan, healthcare benefits – up to XXX per employee
- Professional services contractors
    - Up to XX % of FTE salary total
- Construction loan payments
- Building/office rents
    - Up to XX square foot per employee
- Building maintenance
- Insurance
- Utilities
- Fleet management
    - Vehicle maintenance
    - Vehicle fuel
    - Insurance
- Etc.

Total amount of OPEX
– Customer revenues

_____

USF or CAF2 support

Lesser or No rate of return requirement needs to be factored into such support

The RLEC would be responsible for earnings from sales of advanced services inside and outside of its service territory. By this approach, competition would be encouraged across local exchange boundaries not by subsidizing it with federal money, but by stimulating it with a drive to seek profits from an advanced infrastructure.

An example of the benefits of such an approach is provided here in the way of a brief hypothetical case: National ILEC A owns the only fiber route connecting El Paso, TX to Las Cruces, NM, but conducts scant business with the lower income rural communities along that route. RLEC B is invited by the towns of Anthony, TX and Sunland Park, NM to extend its nearby fiber network to serve the two communities, but is discouraged by the RLEC's controller because of the loss of USF and NECA support that the RLEC would incur if its network is used to provide unregulated or unsupported services. But then, the USF support and NECA separations schemes are revised to incent RLEC B to self-finance an expansion of its fiber route and augment its income with sales of service to two unserved or underserved communities. The result: less regulatory cost, no further grant monies used, more competition, upgraded systems, and served customers.

Some rate of return requirement may be necessary for the smallest, most remote RLECs that have limited exogenous revenue potential.

5. Service to tribal communities

The achievements of tribally owned telcos, and of a few locally-based RLECs serving tribal communities, in surmounting the digital divide on tribal lands have been well noted. An easy comparison can be made of the availability of telecommunications services on tribal lands as provided by tribally-oriented RLECs versus larger, out-of-state ILECs or mobile wireless carriers. Whether tribally owned or not, however, certain expenses above those common to all RLECs are incurred on tribal and federally managed lands. Those involve the need and the requirement to operate within the culture of the tribe and demands placed by the tribe and/or the federal government to comply with the appropriate land use authorization procedures.

An acceptable use of USF or CAF support should be the additional personnel required to acquire rights of way on federally managed lands and additional expenses necessary to educate tribal members on the value and use of the Internet in order to stimulate broadband usage.

Sacred Wind, for example, assigns a bilingual employee to work with the 22 local Navajo Chapters (local communities and political subdivisions) for support for rights of way applications[6] and to affirm the company's operating in culturally acceptable ways. Even the company's broadband offering is designed to assure its customers of privacy and security (a Navajo principle related to Hozhõ' and *K'e* or *K'e nisiin*, a person's pursuit of harmony through respect of others) and to feature as part of its services applications that are of supreme relevance to its culture, such as its history, traditional medicines, native language training, etc.

For an RLEC serving a tribal area, the acquisition of right of way on federally-managed lands represents up to 20% of the RLEC's construction costs. Not only does this disadvantage an RLEC operating on tribal lands in comparison with other telcos, but it points to an uncoordinated mission at the federal level: does the federal government want broadband and voice telecommunications services established quickly on tribal lands or not? Do the FCC and Department of Interior have common goals? Do the state highway and land departments coordinate infrastructural development with their federal government counterparts? Were

[6] The Navajo Nation's right of way process involved in granting land use authorization to Sacred Wind has been improved over time to the point that it is no longer an impediment to service delivery. Nevertheless, it is still a process that must be worked and it requires initiation at the local Chapter level where the local community votes on the use of their lands. Once the Navajo Nation authorization is granted, the Bureau of Indian Affairs begins its lengthy review of the same documentation.

right of way a mundane and easily manageable issue for RLECs, the federal government might have saved billions of dollars of stimulus money for broadband infrastructure by having much more infrastructure developed over federally-managed lands by RUS borrowers over the last decade. Said in another way, a significant piece of federal money granted or loaned today for telecommunications expansion in the West is spent wastefully on a government-driven, heavily bureaucratized right of way process, and some of that money goes right back to the federal government in payment of its fees.

In short, the FCC should take into account the additional effort needed to properly serve the largely unserved tribal areas and the additional work to stimulate broadband usage as it develops its CAF budget. A special set-aside for tribally oriented RLECs is appropriate until networks are installed and service availability is reached at levels that approximate a national average (FCC NPRM paragraph 302).

6. States to coordinate support with FCC

As a way to better manage the growth of USF or CAF funds, the FCC could require states to raise revenues at the state level to cover a specific percentage of the needs of those RLECs operating in each state (FCC NPRM paragraph 86). This would require each state to establish its own USF program and to eliminate or reduce to federal levels all intrastate access rates (FCC NPRM paragraph 321). For the sake of further discussion and analysis, the CAF might make itself responsible for covering 80% of an RLEC's otherwise unsupported operating expenses and the states' USF programs would be responsible for the remaining 20%.

Both the FCC and the states may require annual reports from each RLEC on specific uses of their USF support, using the categories listed in the example in Section 3 of this response, Qualified Expenses for CAF Support (FCC NPRM paragraph 90). The support would not be dedicated to broadband alone (FCC NPRM paragraph 92), but to the operating expenses of an RLEC that provides both voice and acceptable levels of broadband services. The only exceptions to this would be in the case of an RLEC seeking to reject its COLR status, replaced by another entity as a COLR by the state utility regulatory commission.

In the annual status reports submitted to the FCC the CAF2 recipients would additionally report the availability by bandwidth of broadband to its customer base, responding to specific benchmarks imposed by the FCC. Since the RLECs would be the primary recipients of CAF2 support, their COLR obligations would necessarily include broadband provisioning on top of voice services. Within the timeframe dictated by the FCC for network completion each RLEC would have to reach 90% or 95% service coverage (FCC NPRM paragraph 124). For those RLECs that are not at those levels for either voice or broadband today, additional construction loans or self financing would be required of them to retain their COLR status, or at least to receive CAF2 support. Also, in response to the question asked about how much to charge customers for installation (FCC NPRM paragraph 126), the RLECs using RUS loan

monies for network upgrades are prohibited today from charging their customers for installation of new facilities, which acts to further reinforce the universal service policies of the FCC.

7. Implication of RLECs' loss of USF/CAF support

Many RLECs today operate in areas of the country where no sound business case could be made for the provision of basic or broadband services without significant USF support. According to a study conducted in 2003, a typical RLEC received 22 percent of its revenues from interstate long distance carrier access charges, 18 percent from intrastate access charges, 40 percent from federal universal service funding support and only 20 percent from their customers.[7] From testimony delivered to Congress in 2004 by a rural Texas RLEC, 31 percent of the carrier's revenues were derived from carrier access charges, 60 percent from the FCC's USF, and only 9 percent from customers.[8] Today, with carrier access support reduced through reforms enacted at the federal and state levels since these reports were made, USF support for RLECs is even more critical. Similar to many smaller RLECs operating in remote, low income areas of the country, Sacred Wind's customer revenues represent little more than 10% of its total receipts – its operating expenses are covered in large part by the FCC's USF and by the NECA pool. Such RLECs shudder to think what would happen to their services to customers, to their employees, to their cooperative members or shareholders, and to their loan obligations if USF support were to be significantly reduced or eliminated all together. Because one of the RLEC's main operating costs happens to be its monthly construction loan payment, what impact would the RLECs' default of their loan payment have on local banks or on the RUS's telecommunications loan program?

Should the FCC's CAF program deny support for an RLEC with an outstanding construction loan that it, curiously enough, incurred as a result of current FCC policies, the FCC should use CAF1 monies to eliminate such RLECs' debt and then allow the RLEC to operate, if it could, more on its own resources, or allow it to fold unencumbered. Should the FCC's CAF program *reduce* support for an RLEC with an RUS construction loan (FCC NPRM paragraph 211, etc.), the FCC should be required to reduce the amount of the RLEC's debt payments to match the reduction in the USF support it would experience until the RLEC has been given the opportunity to generate other revenues from sources that are today denied it (see Section 4, paragraph entitled "Less or No rate of return requirement…". Though this suggestion might seem just one more government bailout, it is the least the FCC could do to avoid serious financial harm to an RLEC and to its community (FCC NPRM paragraph 206).

[7] "Economic Efficiency and the Support of Universal Service in Rural Markets," Parson, Steve G., Ph.D., June, 2003.
[8] Wendell Taylor, Central Texas Telephone Company, before the U.S. Senate Commerce Committee, May 12, 2004.

Basic rates

Sacred Wind does not agree that basic telecommunications rates in all rural areas should be lower than rates in urban areas (FCC NPRM paragraph 172). Local rates as established by state regulatory commissions should include some level of consideration for the cost of service delivery, but they should also take into account a community's income level. Over 60 % of Sacred Wind's customers qualify for the Tribal Lifeline rate and, as the company extends service into the more remote areas of its territory, it is finding that over 90 % of new customers so qualify. Sacred Wind's basic rate is pennies under the national average urban rate, which we believe is affordable for the non-Lifeline or non-Tribal Lifeline customers in our territory. Rural rates, therefore, should at least be on par with the national or a state average as a further qualification for USF support, taking into account the need to maintain special Lifeline and Tribal Lifeline discounts where the income level of customers requires it so.